

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U39E) For Expedited Approval of the Power Purchase Agreement with Placer County Water Agency and for Authority to Recover the Costs of the Agreement in Rates.

Application 12-05-024
(Filed May 21, 2012)

**DECISION GRANTING APPLICATION OF
PACIFIC GAS AND ELECTRIC COMPANY FOR
APPROVAL OF ITS POWER PURCHASE AGREEMENT WITH
PLACER COUNTY WATER AGENCY**

1. Summary

This decision grants the Application of Pacific Gas and Electric Company for Approval of its Power Purchase Agreement with Placer County Water Agency. Approving this Power Purchase Agreement (PPA) is reasonable and in the public interest because it promotes local reliability and is cost effective.

The PPA provides that Pacific Gas and Electric will purchase the energy, including Renewables Portfolio Standard-eligible energy, and the capacity of five existing and operating hydroelectric powerhouses in the town of Forest Hill that helps meet Resource Adequacy requirements for this area. The powerhouses are located in the South of Palermo sub-area of the Sierra local area, as defined by the California Independent System Operator. The term of the agreement is four years and eight months.

2. Background

Pacific Gas and Electric Company (PG&E) requests approval of a power purchase agreement (PPA) with Placer County Water Agency (PCWA) for hydroelectric power deliveries from five existing and operating powerhouses located in the town of Forest Hill. PG&E further requests approval of the cost of this PPA through its Energy Resource Recovery Account (ERRA).

The term of the PPA is four years and eight months, from May 1, 2013 to December 31, 2017; this PPA replaces two previous PPAs that expire in March and April of 2013. The PPA is for the purchase of energy and flexible generation capacity that counts toward local Resource Adequacy (RA) capacity requirements.¹ The PPA also provides for the transfer of Renewable Energy Credits for those facilities that generate Renewable Portfolio Standard (RPS) eligible energy.

This PPA advances state policy that requires the use of renewable energy. Three of the five powerhouses are certified by the California Energy Commission (CEC) as eligible renewable energy resources under the California RPS (Pub. Util. Code § 399.12.) PG&E requests a finding that energy generated by these three powerhouses is RPS-eligible for the purpose of compliance with PG&E's RPS obligation. PG&E asserts that "approval of the new PPA will allow these powerhouses to continue to provide PG&E with energy, local capacity, and

¹ The powerhouses under this PPA are located in the South of Palermo sub-area of the Sierra local area as defined by the California Independent System Operator (California ISO). Application (A.) 12-05-024 at 1.

operational flexibility that match well with PG&E's portfolio and {California ISO's} CAISO's needs."²

PG&E claims six benefits³ of this PPA:

1. Local Reliability
2. Dispatchability/Flexibility
3. Ancillary Services Capability
4. High Viability
5. RPS Compliance Goals
6. Compares Favorably with other non-RPS-eligible Dispatchable Local Resources

PG&E provides the following table summarizing the benefits that each powerhouse unit produces:⁴

Powerhouse / Unit	Resource Adequacy (RA) Capacity (MW)	Annual Energy Deliveries (GWh)	RPS-eligible	Ancillary services provided
Middle Fork and Ralston	213	963.4	N	Regulation Up and Down, Spin, Non-spin
French Meadows	17	60.3	Y	Spin / Non-spin
Oxbow	6	32.8	Y	None
Hell Hole	0.6	3.6	Y	None
Total	236.6	1,060.1		

² *Id.* at 1-2.

³ *Id.* at 4.

⁴ *Id.* at 3. Note that the table here is slightly simplified (e.g. footnotes are removed) relative to the original.

There are two requirements that PCWA must satisfy in the future to honor this PPA. First, as part of PCWA's obligations under the PPA, PCWA must obtain and pay for the necessary interconnection agreements to continue delivering power to the grid. Second, at the time of submission of A.12-05-024, PG&E expected that PCWA's Federal Energy Regulatory Commission (FERC) long-term license would expire on February 28, 2013 and that the license would be reinstated at approximately that time. PG&E states that the PPA protects it against losing value if the FERC long-term license requires a reduction in operating capacity.⁵

2.1. Procedural Background

PG&E filed this application on May 21, 2012. Concurrently, PG&E also filed a motion to file certain materials under seal and to be held confidential for three years. Those materials are:

- Appendix A – Contract Summary and Analysis
- Appendix B – Power Purchase Agreement
- Appendix C-1 – Appendix to Independent Evaluator Report
- Appendix D – Electric Capacity Procurement Limits

No protests or other responses were filed in response to the application or the motion to file under seal.

On February 19, 2013 the assigned Administrative Law Judge (ALJ) issued a ruling directing PG&E to augment the record with certain additional information, including a public, redacted version of Appendix A. On March 5, 2013 PG&E filed its "Submission of Information As Requested by Administrative

⁵ *Id.* at 7-8.

Law Judge's Ruling" (Submission of Information) along with a further motion to file the materials under seal. This motion to file under seal specifically covers the revised version of Appendix A. No responses were filed to the motion.

3. Authority and Discussion

The Commission has adopted a number of requirements for PPAs that are addressed in the following subsections. Generally, the RPS proceedings develop requirements for RPS-eligible PPAs and the Long Term Procurement Plan (LTPP) proceedings develop requirements for non-RPS PPAs. About one tenth of the energy and capacity of this PPA is expected to be RPS eligible. Therefore, while we evaluate the PPA against both RPS and LTPP requirements, we focus our discussion in this decision more heavily on the non-RPS requirements.

3.1. Consistency with LTPP Requirements

The Commission has a long-standing preference against bilateral contracts.⁶ However, the Commission has explicitly allowed bilateral contracts with the intent of furthering local reliability.⁷ PG&E observes that the Sierra local area is currently deficient in local RA capacity, as identified by the California ISO.

Because the Sierra local area is currently deficient in RA capacity and because the PPA provides RA resources in the Sierra local area, we find that the PPA provides local reliability consistent with PG&E's needs.

⁶ See, e.g. Decision (D). 03-12-062, Finding of Fact 16.

⁷ D.04-07-028 at 17.

In D.07-12-052, the Commission expressed a desire that new resources have operational flexibility. The existing, dispatchable hydro resources in this PPA provide operational flexibility.

All of PG&E's procurement is subject to PG&E's Bundled Procurement Plan as described in D.12-01-033 and PG&E's Advice Letter 4026-E. PG&E's request in this application for exemption from its annual procurement limits for calendar year 2012 in its Bundled Procurement Plan, however, is moot due to today's decision's effective date in 2013. Notwithstanding that fact, procurement under this PPA is subject to all of current requirements of PG&E's Bundled Procurement Plan, as listed in D.12-01-033 and Advice Letter 4026-E.

3.2. Valuation

We find that this PPA provides reasonable value to PG&E's ratepayers because this is a cost-effective way of meeting local RA capacity requirements in the Sierra local area. Local RA requirements for RA compliance year 2013 were set in D.12-06-025.

The Commission encourages "least cost, best fit" (LCBF) procurement of all resources and requires LCBF for RPS procurement.⁸ PG&E applied a simplified version of the RPS LCBF requirements in this case because this PPA includes both RPS and non-RPS resources.⁹ PG&E argues that this contract meets the LCBF standard.

We find that because of the small fraction of RPS deliveries relative to the total PPA, the application of the simplified LCBF criteria is reasonable.

⁸ See D.07-12-052 and D.04-07-029.

⁹ A.12-05-024 at 8.

In applying this methodology, PG&E first calculated net market value by comparing the present value of benefits of the contract to the present value of payments. PG&E argued that the PPA compares favorably to other RPS options.

Based on our review of PG&E's application and supporting information, we find that the PPA compares favorably to other RPS options.

Second, in evaluating the fit of this project, PG&E provides a qualitative evaluation, which discusses the reliability benefits of the generation resources in this PPA.

Although some of the project consists of RPS eligible energy, the majority of the energy and capacity of this contract is from the two non-RPS powerhouses. For this reason, we place most weight in our evaluation on the information that PG&E provides assessing this project against other local reliability procurement options. In particular, PG&E makes a showing in Appendix A to the application that the price of this PPA is reasonable in comparison to other potential local reliability solutions. Included in PG&E's comparison is a discussion of the costs that PG&E customers might bear in the event of procurement by the California ISO via its Capacity Procurement Mechanism in order to maintain local reliability.

Our review of this analysis causes us to find that this PPA is economically justified.

3.3. Consistency with Emissions Performance Standard (EPS)

We find that this PPA is exempt from the EPS we established in D.07-01-039. The forecast capacity factor for these hydro resources is below the 60% threshold set in D.07-01-039, and therefore procurement of these resources is not covered procurement under the EPS.

3.4. Independent Evaluator and Procurement Review Group

In D.09-06-050, the Commission set rules for the oversight of bilateral RPS contracts by the Procurement Review Group (PRG) and Independent Evaluator (IE). Essentially, these rules state that the PRG and IE should review bilateral RPS contracts and that bilateral contracts should be reviewed according to the same standards as contracts arising through a competitive procurement process.

In its application, PG&E states that the PRG was informed of this contract on October 11, 2011 and provides the report of IE Lewis Hashimoto.¹⁰ The IE summarizes its conclusions as follows:

Arroyo's opinion is that the negotiations between PG&E and PCWA were, overall, conducted in a manner that was fair to ratepayers. Arroyo agrees with PG&E that the contract merits CPUC approval, based on an independently developed opinion that the contract will likely provide a low to moderate contract price, moderate to high net valuation, moderate portfolio fit with PG&E's supply needs, and high project viability.¹¹

We find that PG&E has complied with the PRG and IE oversight requirements of D.09-06-050.

3.5. RPS Eligibility and Portfolio Content Category

PG&E has stated that the three small powerhouses (French Meadows, Oxbow, and Hell Hole) have been certified as RPS-eligible by the California Energy Commission. PG&E states that the approximately 96 GWh per year of energy produced should count toward its RPS obligations. PG&E further states

¹⁰ A.12-05-024 at 13.

¹¹ A.12-05-024, Appendix C at 3.

that the first point of interconnection of these resources is within the California ISO, and that the energy delivered should therefore be counted within the first portfolio content category described in Public Utilities Code Section 399.16(b)(1).

The Commission has no jurisdiction to determine whether a project is an eligible renewable energy resource, nor can the Commission determine prior to final CEC certification of a project, that “any procurement” pursuant to a specific contract will be “procurement from an eligible renewable energy resource.” Therefore, while we include a finding of eligibility here, this finding has never been intended, and shall not be read now, to allow the generation from a non-RPS-eligible resource to count towards an RPS compliance obligation. Nor shall such finding absolve the seller of its obligation to obtain CEC certification, or the utility of its obligation to pursue remedies for breach of contract. Such contract enforcement activities shall be reviewed pursuant to the Commission’s authority to review the administration of such contracts.

In this decision, we make no determination regarding the PPA’s portfolio content category classification. The RPS contract evaluation process is separate from the RPS compliance and portfolio content category classification process, which require consideration of several factors based on various showings in a compliance filing.¹² Thus, making a portfolio content category classification determination in this decision regarding the procurement considered herein is not appropriate. PG&E should incorporate the procurement resulting from the PPA and all applicable supporting documentation to demonstrate portfolio content category classification in the appropriate compliance showing(s)

¹² See D.11-12-052.

consistent with all applicable RPS program rules regarding compliance verification.

3.6. Consistency with PG&E's 2012 RPS Procurement Plan

We find that this PPA is consistent with PG&E's 2012 RPS Procurement Plan. PG&E's 2012 RPS Procurement Plan was conditionally approved in D.12-11-016. As PG&E notes in its Submission of Information, the primary objective of the PPA is RA capacity not RPS energy.¹³ Accordingly, PG&E asserts that it is not necessary for the Commission to evaluate the PPA relative to the 2012 RPS Procurement Plan in detail in order to find the PPA reasonable. Nevertheless, PG&E cites several ways in which the PPA is consistent with the 2012 RPS Procurement Plan:

- Recontracting with an existing resource,
- Portfolio Content Category 1 procurement,
- Resources within PG&E's territory,
- High viability resources, and
- Minimal cost uncertainty.

We do not review these factors in detail here. Instead, we note that, given the low fraction of RPS resources in this PPA, PG&E has made a satisfactory showing that this procurement is consistent with the spirit of the 2012 RPS Procurement Plan.

¹³ Submission of Information, at 2-3.

3.7. Compliance with RPS Standard Terms and Conditions

PG&E has made minor modifications to the “non-modifiable” Standard Terms and Conditions (STCs) set forth in D.07-11-025, D.08-04-009 as modified by D.08-08-028, and D.10-03-021.¹⁴ These STCs are intended to be included, without modification, in all RPS contracts. The modifications in this case reflect the fact that this is a hybrid PPA including two powerhouses that are not CEC-certified renewable resources. We find that these modifications are reasonable and necessary in this case and that this PPA is consistent with our Standard Terms and Conditions requirements. The modifications are:

- In STC 2, the Conveyance of Green Attributes, the word “Project” is substituted for the word “Unit(s)”. This is a change relative to D.08-08-028, but reverts to the language of D.07-11-025.
- In STC 6, Eligibility, the phrase “the {Eligible Renewable Resource} ERR Resources of” is added as a modifier of “the Project”; corresponding changes are made for subject/verb agreement.

PG&E has provided a reasonable justification for the minor changes from the STCs in this instance of a hybrid RPS and non-RPS contract. The modifications to the STCs do not appear to materially impact the intent of the STCs. Any material modifications to the non-modifiable STCs (i.e. any modifications that have impacts beyond recognizing the hybrid nature of this PPA) are expressly not approved.

¹⁴ The exact text of the modified STCs as included in the PPA are shown in Appendix 1 of this decision.

3.8. RPS Improvements to PCWA Facilities

In response to certain contract terms and conditions, we clarify that in the event that PG&E is asked to pay for upgrades to PCWA's facilities in order to maintain their future RPS eligibility, PG&E must prudently evaluate the costs and benefits of this choice. As discussed above, the primary value of this PPA is local reliability, not RPS. Any additional expenditures under this PPA must be justified.

PG&E must therefore inform its PRG promptly if it foresees a necessity to fund RPS upgrades. Today's decision does not pre-authorize any such expenditures, and if PG&E elects to make such expenditures without authorization, it does so subject to a future reasonableness review. If PG&E wishes to seek such authorization, it should do so according to then-current rules of the RPS program.

3.9. ERRRA

PG&E requests to recover costs incurred under this PPA in its ERRRA. We agree that this is the appropriate ratemaking treatment and grant the request. PG&E may recover costs of this PPA through its ERRRA subject to our review of PG&E's prudent administration of the PPA.

4. Outstanding Motions for Confidentiality

As described above, PG&E has filed two motions¹⁵ to file certain materials under seal citing D.06-06-066, D.08-04-023, and Public Utilities Code Section 583. In today's decision, we grant these motions with the limitations set forth below.

¹⁵ Concurrent with the application and concurrent with the March 5, 2013 Submission of Information.

The Commission, in implementing Public Utilities Code Section 454.5(g), has determined in D.06-06-066, as modified by D.07-05-032, that certain material submitted to the Commission as confidential should be kept confidential to ensure that market sensitive data does not influence the behavior of market participants. D.06-06-066 adopted a time limit on the confidentiality of specific terms in RPS contracts. Such information, including price, is confidential for three years from the date the contract states that energy deliveries begin, except contracts between IOUs and their affiliates, which are public.

PG&E asserts that information in Appendix A,¹⁶ Appendix B, Appendix C-1, and Appendix D is confidential market sensitive information. PG&E's motions for confidentiality of these materials are unopposed.

These materials contain market sensitive information, and therefore we grant PG&E's motions for confidential treatment subject to the limitations discussed below.

Confidential treatment only extends to the specific material expressly covered under our rules and decisions governing confidentiality. In this case, PG&E has requested confidential treatment of the entirety of Appendices B, C-1, and D.¹⁷ While PG&E's motion was unopposed, we discourage such blanket filing of materials when seeking confidential treatment. In the future, PG&E should expressly redact only those portions of documents for which it seeks confidential treatment. For this reason, we include in Appendix 1 to this decision

¹⁶ Note that PG&E has filed three versions of Appendix A: the original was marked confidential in its entirety, and two versions submitted on March 5, 2013, one of which shows the redacted information and one which masks the redacted information.

¹⁷ A public, redacted version of Appendix A was filed on March 5, 2013.

the RPS STCs, as modified in this PPA. We do not believe that these modifications materially deviate from the intent of Commission policy, nor do they rise to the level of requiring confidential treatment. In addition, PG&E must timely honor any requests for public, redacted versions of Appendix B, Appendix C-1, and Appendix D.

The confidential, unredacted versions of these documents shall remain under seal for three years from the effective date of this decision, and shall not be made accessible or disclosed to anyone other than the Commission and its staff except on the further order or ruling of the Commission, the assigned Commissioner, the assigned ALJ or the ALJ then designated as Law and Motion Judge.

5. Categorization and Need for Hearing

This proceeding is categorized as ratesetting. There are no disputed issues of fact; hearings are not needed.

6. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

7. Assignment of Proceeding

Mark J. Ferron is the assigned Commissioner and Melissa K. Semcer is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. This PPA furthers reliability by providing operationally flexible resources within the Sierra local area.
2. The costs of this PPA are reasonable in relation to alternative local RA options.
3. Procurement of energy pursuant to this PPA from the three small powerhouses (French Meadows, Oxbow, and Hell Hole) that have been certified as RPS-eligible by the California Energy Commission (CEC) is procurement from eligible renewable energy resources for purposes of determining PG&E's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), or other applicable law, subject to verification by the CEC. This finding has never been intended, and shall not be read now, to allow the generation from a non-RPS-eligible resource to count towards an RPS compliance obligation. Nor shall this finding absolve the seller of its obligation to obtain CEC certification, or the utility of its obligation to pursue remedies for breach of contract.
4. The forecast capacity factor of the generation resources included in this PPA is less than the 60% threshold established for applicability of the EPS.
5. Since today's decision was not effective during calendar year 2012, PG&E's Bundled Procurement Plan limits for 2012 are not relevant.
6. This PPA is consistent with PG&E's 2012 RPS Procurement Plan.
7. This application is unopposed and there are no disputed issues of material fact.

Conclusions of Law

1. The PPA is not a form of covered procurement subject to the EPS.
2. Procurement under this PPA is subject to all current requirements of PG&E's Bundled Procurement Plan.
3. PG&E's showing demonstrates that it has complied with the requirements of D.09-06-050 governing the oversight of bilateral RPS contracts.
4. PG&E's modifications to RPS Standard Terms and Conditions are reasonable due to the mix of RPS-eligible and non-RPS resources included in this PPA.
5. Modifications to the RPS Standard Terms and Conditions should be made public.
6. The preliminary categorization of this proceeding as ratesetting should be confirmed. Hearings are not necessary.
7. This decision should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The Power Purchase Agreement between Pacific Gas and Electric Company and the Placer County Water Authority is approved.
2. Pacific Gas and Electric Company (PG&E) is granted authority to recover the costs of the Power Purchase Agreement (PPA) through its Energy Resource Recovery Account, subject only to the Commission's review of PG&E's prudent administration of the PPA.

3. The confidential, unredacted versions of Appendices A, B, C-1, and D to the application filed under seal shall remain under seal for three years from the effective date of this decision, and shall not be made accessible or disclosed to anyone other than the Commission and its staff except on the further order or ruling of the Commission, the assigned Commissioner, the assigned Administrative Law Judge (ALJ) or the ALJ then designated as Law and Motion Judge. Confidential treatment does not extend to the Renewables Portfolio Standard Terms and Conditions, as modified in the Power Purchase Agreement. Pacific Gas and Electric Company must timely comply with any request for public, redacted versions of Appendices B, C-1, and D.

4. Hearings are not needed in this proceeding.

5. Application 12-05-024 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

Appendix 1 – Standard Terms and Conditions

Standard Term and Condition	Text in PPA
2 - Conveyance of Green Attributes	Green Attributes. Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project.
6 - Eligibility	Seller Representations and Warranties. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the ERR Resources of the Project qualify and are certified by the CEC each as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard, To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

(End of Appendix 1)